by the contractor, and yet he will not thereby of necessity render himself liable to third persons for the negligence of the contractor in carrying out the works." Taking all the various factors and circumstances into consideration together with the evidence of the defendant and Ong Ah Sai I think that the defendant was entitled to give the orders as to how the work should be done and to exercise a substantial degree of detailed control over Ong Ah Sai in its performance.

I have therefore, after experiencing considerable difficulty, arrived at the conclusion that Ong Ah Sai was the servant or agent of the defendant who was therefore responsible for his acts.

It was also contended on behalf of the plaintiff as I understood it:—

(1) that the defendant was a trespasser on the highway in that he created an obstruction by hindering the free passage of the public along the roadway which constituted an improper use thereof. In other words that the placing of the lime on the roadway was an unlawful and wrongful act; and

(2) that even if Ong Ah Sai was an independent contractor the defendant was still liable for his misdeeds because he was engaged in a hazardous operation.

In view of the conclusions at which I have arrived it is unnecessary for me to express any opinion on these matters and I refrain from doing so.

The remaining issue for decision is as to the amount of damages to which the plaintiff is entitled. As a result of the accident the plaintiff has completely lost the sight of his right eye and an artificial one will have to be substituted. His left eye very fortunately was quite uninjured and is normal. At the time of receiving the injury the medical evidence was that he would have suffered very severe pain for about a week but thereafter the pain would recede and after a further two weeks would cease altogether. Three operations were performed in all — the final one on the 9th of August, 1957, by Dr. Milne whose evidence was that nothing further could be done except to remove the eye which is now blind and unsightly and fit an artificial one. Dr. Milne recommended that this should be done at Moorfield Hospital and that two or three operations may be required as a result of which the plaintiff may suffer some pain which would last about two weeks after each operation. With only one eye the plaintiff would not be accepted into any of the armed services and he has undoubtedly suffered a very severe handicap.

Taking all these various factors into consideration I assess the general damages to which, in my view, the plaintiff is entitled at the sum of $17,000.00 which together with special damages which have been agreed at $250 makes a total of $17,250.00.

There will be judgment therefore for the plaintiff for $17,250.00 and costs.

Order accordingly.

Solicitors: *Battenberg & Talma; Braddell Bros.*

GOH LENG SAI v. REG.

[A.Cr.J. (Ambrose J.) September 13, 1958]

[Singapore — Magistrate's Appeal No. 171 of 1957]

Prevention of Corruption Ordinance (Cap. 121), ss. 3(b), 4 and 5 — Onus of proof — Evidence Ordinance (Cap. 4), ss. 64 and 92 — Sentence — Recovery of secret gift.

Evidence — Contract — Proof of contract distinguished from proof of terms of contract.

The appellant in this case was convicted and sentenced to six months' imprisonment on the following charge: "..... that you on or about the 16th day of February, 1957 at about 8.00 p.m. at Singapore, having a contract with the Singapore City Council, did corruptly give to an agent, namely, G. M. Richards, the acting Chief Engineer (Construction) of the Sewerage Department, of the City Council, the sum of one thousand dollars as an inducement or reward for showing favour to yourself in relation to his principal's affairs, and thereby committed an offence under section 3(b) and punishable under section 4 of the Prevention of Corruption Ordinance (Cap. 121)."

On appeal it was contended for the appellant that (i) there was insufficient evidence that the appellant had a contract with the City Council, the only evidence adduced by the prosecution being oral evidence; (ii) G. M. Richards was not in a position to show favour on the date in question; (iii) the evidence for the prosecution showed that the money was not given as an inducement or reward for showing favour as Richards was never asked to show any favour; and (iv) the District Judge did not consider the possibility that Richards was an accomplice.

Held: (1) the existence of a contract or contractual relationship may be proved by oral evidence. Proof of the existence of a contract must be distinguished from proof of the terms of a contract. Section 92 of the Evidence Ordinance does not apply to proof of the existence of a contract. Section 64 of the Evidence Ordinance requires the production of a document only if it is desired to prove the contents of the document;

(2) there was no onus on the prosecution to prove that Richards was in a position to show favour at the time the appellant gave him the money. It was sufficient to show that Richards was an agent of a public body as defined in section 2 of the Prevention of Corruption Ordinance;

(3) under section 5 of the Prevention of Corruption Ordinance, when it was proved that any money had been given to a person in the employment of a public body by a person holding a contract from the public body, such money shall be deemed to have been given corruptly as an inducement or reward for showing favour in relation to his principal's affairs unless the contrary was proved. Once the prosecution had proved that the appellant held a contract from the City Council and that he had given a sum of money to an employee of the City Council, the onus was on the appellant to show that it was not given corruptly as an inducement or reward for showing favour to him in relation to the affairs of the City Council;

(4) there was no evidence to support the possibility that Richards was an accomplice.

In cases of corruption it is necessary to impose a sentence of imprisonment as a sentence of fine has no deterrent effect. In view of section 6 of the Prevention of Corruption Ordinance the amount of $1,000 given to Richards should be paid to the City Council.

Cases referred to:—

(1) *R. v. Holy Trinity...Hull* (1827), 7 B. & C. 611.

(2) *Anderson v. Clay* (1816), 1 Stark. 405.

(3) *R. v. Dickinson & de Rable,* 33 Cr. App. R. 5.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Kuan Yew for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Ambrose J.: In this case the accused was charged in the District Court as follows:

That he, on or about the 16th day of February, 1957, at about 8.00 p.m. at Singapore, having a contract with the Singapore City Council, did corruptly give to an agent, namely, G. M. Richards, the acting Chief Engineer (Construction) of the Sewerage Department of the City Council, the sum of one thousand dollars as an inducement or reward for showing favour to himself in relation to his principal's affairs, and thereby committed an offence under section 3(b) and punishable under section 4 of the Prevention of Corruption Ordinance (Chapter 121).

Counsel for the appellant contended that there was insufficient evidence that the appellant had a contract with the City Council. The evidence adduced by the prosecution as to the contract was the oral evidence of P. C. Parry, the Deputy Chief Engineer, and G. M. Richards, the Chief Engineer, Planning & Designing, Sewerage Department, City Council. Parry testified that the appellant had a minor sewer contract with the City Council on the 16th February, 1957. Richards testified that the appellant was working on the construction of minor sewers. Counsel contended that the contract must be proved by the production of the document embodying the terms of the contract. Counsel relied on section 64 of the Evidence Ordinance. This provides that "documents must be proved by primary evidence except in the cases hereinafter mentioned." All that this section means is that, if it is desired to prove the contents of a document, the document itself must, save in certain exceptional cases, be produced. In my opinion it was unnecessary to produce any document embodying the terms of the contract. Proof of the existence of a contract must be distinguished from proof of the terms of a contract. Under section 92 of the Evidence Ordinance the terms of a contract, which has been reduced to the form of a document, can only be proved by production of the document (or secondary evidence in a proper case). But, in my view, the existence of a contract or contractual relationship may be proved by oral evidence. One example of this rule is *R. v. Holy Trinity...Hull.* [1] In that case the question was whether a pauper had gained a settlement in a certain parish by the occupation of a tenement. Parol evidence was admitted to prove the mere fact of tenancy, although it had been created by a written document. Another example is *Alderson v. Clay,* [2] where it was held that the fact of partnership may be proved by parol evidence of the acts of the parties without producing the partnership deed.

Secondly, counsel for the appellant contended that G. M. Richards was the Chief Engineer, Planning & Designing, Sewerage Department, City Council, on the 16th February, 1957, and, therefore, was not in a position to show favour on the 16th February, 1957. But according to the evidence adduced by the prosecution, Richards would have become Chief Engineer (Construction) as from Monday, the 18th February, from which day the appellant's construction work would have been under the supervision of Richards and Richards would have been in a position to show favour to the appellant. Here it must be pointed out that there is no onus on the prosecution to prove that Richards was in a position to show favour at the time the appellant gave him the money. This is clear from the case of *R. v. Dickinson & de Rable.* [3] It was sufficient to show that Richards was an agent of a public body as defined in section 2 of the Prevention of Corruption Ordinance.

Thirdly, counsel for the appellant contended that the evidence for the prosecution showed that the money was not given as an inducement or reward for showing favour as Richards was never asked to show any favour. Under section

5 of the Prevention of Corruption Ordinance, however, when it is proved that any money has been given to a person in the employment of a public body by a person holding a contract from the public body, such money shall be deemed to have been given corruptly as an inducement or reward for showing favour in relation to his principal's affairs unless the contrary is proved. Once the prosecution had proved that the appellant held a contract from the City Council and that he had given a sum of money to an employee of the City Council, the onus was on the appellant to show that it was not given corruptly as an inducement or reward for showing favour to him in relation to the affairs of the City Council. This onus the appellant never attempted to discharge. He merely denied giving the money to Richards. The fact that Richards was not in a position to show favour on the 16th February, 1957, by itself, was not enough to show that the money was not paid to him on that day corruptly as an inducement or reward for showing favour in relation to the affairs of the City Council.

Lastly, counsel for the appellant contended that the District Judge did not consider the possibility that Richards was an accomplice. In my opinion, there was no evidence to support the possibility that Richards was an accomplice, and the District Judge was right in taking the view that Richards was not an accomplice.

For the above reasons I dismiss the appeal and confirm the conviction.

As regards sentence, I consider that in cases of corruption it is necessary to impose a sentence of imprisonment as a sentence of fine has no deterrent effect. I do not consider a term of 6 months' imprisonment excessive. I, therefore, confirm the sentence.

As regards the $1,000 given to Richards which the District Judge ordered to be forfeited to the Crown, I set aside the order and order instead that the money be paid to the City Council in view of section 6 of the Prevention of Corruption Ordinance.

Appeal dismissed.

Solicitors: *Lee & Lee.*

LEE AH CHEONG v. REG.

[C.C.A. (Tan Ah Tah Ag. C.J., Wee Chong Jin and Ambrose JJ.) September 19, 1958]

[Singapore — Criminal Appeal No. 18 of 1958]

Criminal Law and Procedure — Trial — Newspaper report concerning defence witness — Whether ground for quashing conviction.

The fact that the newspaper has printed and published an article under the heading "'Expert' Picks Wrong Bullet" concerning a witness for the defence, is no ground for the Court to infer either that the jurors who tried the case had read it or that, if they had read it, they were unfit to try the case or biassed against the prisoner for the purpose of trial. Although such a publication is a contempt of court, it is by itself not a ground for quashing the conviction.

Case referred to:—

(1) *R. v. Armstrong* 35 Cr. App. R. 72.

COURT OF CRIMINAL APPEAL.

The appellant was convicted under section 4 of the Arms Offences Ordinance (Cap. 112) of the offence of using of a fire-arm and was sentenced to death.

One of the grounds of appeal on which the appellant relied concerned the publication during the trial of an article under the heading "'Expert' Picks Wrong Bullet" regarding a witness for the defence in an English daily newspaper published and sold in Singapore. It was contended that the article was highly prejudicial to the defence and that the trial Judge should have dismissed the jury and ordered a fresh trial.

A. P. Rajah for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah Ag. C.J., in giving the judgment of the Court dismissing the appeal, referred to the facts and grounds of appeal which do not call for report, and continued: A further ground of appeal on which the appellant relied concerns the publication during the trial of an article under the heading "'Expert' Picks Wrong Bullet" in an English daily newspaper published and sold in Singapore. It is contended that the article was highly prejudicial to the defence and that the trial Judge should have dismissed the jury and ordered a fresh trial. The manner in which the learned trial Judge dealt with this matter may be seen from the following passage from his summing-up:

"I now turn to deal with the evidence of Sgt. Adams. Before I do so there is one comment that I want to make: you will remember, members of the Jury, the experiment or test which was conducted on Friday morning before you, when Sgt. Adams was asked to leave the Court; how the tapes were unwound from three of the four cartridge cases that were found in the accused's gun. The fourth, you will recall, had no tape at all. How they were all placed in the chamber of the revolver with only the backs of the cases open to view. It was a pity perhaps that the one Sgt. Adams picked out on Thursday was not specifically marked so that there could have been no doubt about it. The Sergeant at any rate maintained that the one he picked out on Thursday was the same one he picked out at the test on Friday. It was a case perhaps of the trap being sprung before it was properly laid. But at any rate, members of the Jury, the matter appears to me to